

CONFIDENTIAL MEMORANDUM

To: Risa S. Sugarman
Chief Enforcement Counsel

From: Jay Arnold
Associate Counsel

Date: April 29, 2015

Re.: Town of Clarkstown Supervisor Race
Case: E-178 / 2015

ALLEGATION:

Multiple reports in the media alleged that The Institute for Municipal Safety Research LLC ("IMSR") acted as an illegal straw donor to make conduit contributions during the 2015 Clarkstown Town Supervisor election. Similar allegations were made by way of formal complaints filed with The Division through the Westchester County District Attorney's office.

It was specifically alleged that an unknown donor used IMSR as a shell business entity to indirectly spend over \$107,900.00 dollars through the Reform Party on the 2015 Clarkstown Supervisor election. The money was allegedly spent entirely in support of George Hoehmann's successful campaign to replace incumbent Town Supervisor Alexander Gromack.

FINDING AND SUMMARY OF INVESTIGATION:

The analysis included review of: files kept and maintained by the New York State Board of Elections; certified documents provided by the Delaware Secretary of State; use of confidential law enforcement techniques; electronic media; Town of Clarkstown board minutes; documents provided by the New York Secretary of State; subpoenaed bank records; review of NYS OGS state contract filings; paperwork provided by the NYS committee for the Reform Party; and the applicable provisions of the New York State Election Law, New York State Penal Law as well as 52 USCS 30122 and 18 USC 1343.

The Division initiated its probe by requesting documentation from the Reform Party committee and the Rockland County Republican Party committee regarding large contributions from IMSR. Both committees promptly complied with the Division's request for documentation and the Division was able to ascertain that IMSR was an LLC incorporated in the state of Delaware.

Delaware Secretary of State records indicate that the managing Member of IMSR is listed as Michael M. Garvey¹, a former Clarkstown Police Sergeant who was dismissed from his annual \$154,636.00 position² after losing protracted disability litigation³ with the city of Clarkstown and after then Supervisor Alex Gromack⁴ cast the deciding vote for his removal at a town board meeting.

Michael M. Garvey is also the founding member of License Monitor LLC⁵, owner of proprietary software, which has a multi-million dollar contract with the NYS DMV⁶ and other state entities.

At that time, it appeared to the division as if Michael M. Garvey evaded the \$5,000.00 corporate contribution limit applicable to "License Monitor Inc." by transferring money from that company into his personal account before he then used IMSR as a straw donor. The motivation for this seemed to be his effort to indirectly support candidate Hoehmann during the 2015 election to take revenge on Alex Gromack for firing him while also hiding his identity to prevent any repercussions of potentially losing the License Monitor LLC contract with the NYS DMV.

The Division applied for and received subpoena authority in February of 2016. Subpoenas were issued to Greater Hudson Bank to obtain the banking records of Michael Garvey. Subpoenas were also issued to Patriot Bank, N.A. to obtain the banking records of IMSR.

Subpoenaes of the bank accounts of IMSR and Michael Garvey showed that Michael Garvey transferred funds from License Monitor Inc. (Contribution limit of \$5,000.00 dollars) into his personal account and then subsequently moved the funds into IMSR prior to making large contributions to the Reform Party and the Rockland County GOP committee. BOE records indicate that the money was spent almost exclusively in support of George Hoehmann's successful campaign to replace incumbent Town Supervisor Alexander Gromack.

Specifically, subpoenaed bank records show that Michael Garvey transferred \$4,500,000.00 dollars from License Monitor Inc. into his personal account on September 29, 2015 (proposed buyout of his shares in the company). After getting assistance setting up an account for IMSR from attorney Lawrence Garvey (Chair of the Rockland County GOP and campaign manager for Rob Astorino), Michael Garvey then transferred \$418,000.00 dollars from his personal account into the account of IMSR on October 7, 2015. The previous account balance of IMSR was zero dollars.

Subpoenaed bank documents indicate that on October 9, 2015, \$109,000.00 dollars were transferred via wire from IMSR to the Rockland County Republican Committee. On October 9,

¹ Certified Certificate of Formation from Delaware Secretary of State lists the managing member as: "Michael M. Garvey, 14 Reservoir Drive, New City, NY 10956"

² 2013 Town of Clarkstown Salary Schedule

³ Matter of Garvey v. Sullivan

⁴ 8/11/2015 town of Clarkstown Board meeting minutes

⁵ NYS DEP'T OF STATE / COMPANY WEBSITE

⁶ NYS OGS Contract award notification

2015, an additional \$109,000.00 dollars were transferred via wire from IMSR to the New York State Committee of the Reform Party.

SBOE records indicate \$107,900.00 dollar contribution was made from IMSR to the New York State Committee of the Reform Party Reporting Account on October 9, 2015. The Reform Party then allocated \$96,053.11 to George Hoehmann on October 19, 2015.

SBOE records further show an additional \$109,000.00 dollar contribution from IMSR to the Rockland County Republican Committee made October 9, 2015. SBOE records indicate the Rockland County Republican Committee subsequently spent \$41,034.37 dollars in direct support of George Hoehmann with the balance purportedly going to unspecified TV ads and consultants listed in the schedule F reports.⁷

LEGAL ANALYSIS:

After analysis of whether the complaint if true would constitute a violation of relevant provisions of the New York State Election Law, there is strong credible evidence that violations of the Election Law and Penal Law have taken place.

The credible evidence indicates that IMSR is a shell LLC used solely as a straw donor for a conduit contribution originating from License Monitor Inc. In determining whether IMSR was a legitimate company, a court would consider that IMSR has no phone number, tangible address, known employees, income or otherwise engages in regular business activities. Bank records clearly indicate that the \$107,900.00 dollars from IMSR originated from License Monitor Inc. via Michael Garvey and was deposited into the IMSR bank account immediately before being wired to the Reform Party Committee and Rockland County Republican Committee.

Under § 14-120(1) of the Election Law:

No person shall in any name except his own, directly or indirectly, make a payment or a promise of payment to a candidate or political committee or to any officer or member thereof, or to any person acting under its authority or in its behalf or on behalf of any candidate, nor shall any such committee or any such person or candidate knowingly receive a payment or promise of payment, or enter or cause the same to be entered in the accounts or records of such committee, in any name other than that of the person or persons by whom it is made.

Under 52 USCS § 30122:

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

⁷ IMSR made two donations in October, 2015 to contribute a total of \$216,900 dollars, at least \$137,087.48 of which was immediately spent on behalf of Candidate Hoehmann.

Given the LLC's lack of corporate existence, it would appear there are violations of the above law. Additionally, given that the funds were transferred via wire, the committees would necessarily have been in contact with Michael Garvey to exchange account information and wiring instructions.

Under § 14-126(6) of the Election Law states in relevant part:

Any person who shall, acting on behalf of a candidate or political committee, knowingly and willfully... make expenditures in connection with the nomination for election or election of any candidate, or solicit any person to make such expenditures, for the purpose of evading the contribution limits of this article, shall be guilty of a class E felony.

Given the clear coordination and conduit contributions, it appears that the LLC was specifically used for the purpose of evading contribution limits.

18 U.S.C. § 1343 provides:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

The above provision would be applicable in the instant matter if there was any otherwise independent illegal activity. This is because the records of both committees show that the donations were made via bank-to-bank wire transfer.

Under section of 175.10 of the Penal Law:

A person is guilty of falsifying business records in the first degree when he commits the crime of falsifying business records in the second degree, and when his intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof.

Preventing the making of a true entry in the business records of an enterprise satisfies the "second degree" requirement. The intent to conceal the true name of the donor satisfies the second element. Falsifying business records in the first degree is a class E felony.

Under the relevant section of 175.35 of the Penal Law:

A person is guilty of offering a false instrument for filing in the first degree when: 1) knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he or she offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be

filed with, registered or recorded or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation; or...

A donation from an inactive company necessarily proves intent to defraud in this instance. It would also create a strong inference that the donor was aware that donations would be filed with the records of the BOE and that misrepresenting the source of the donation was an intentional act used to conceal the identity of the donor. Offering a false instrument for filing in the first degree is a class E felony.

The credible evidence points to a scheme whereby a single shell LLC with no contribution history, no identifiable business characteristics or profit-based source of income was used to make \$216,900.00 dollars in untraceable contributions. Most of these same contributions were then immediately used to successfully unseat an incumbent Town Executive in an election where the individual non-family limit was approximately \$2,722.00 dollars.

Considering the above, there is reasonable cause to believe that a violation warranting criminal prosecution has taken place.

CONCLUSION:

There is credible evidence and reasonable cause to believe that a straw donor was used to make a conduit contribution in violation of the Election Law and Penal Law.